UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Mary Palazzolo, Megan McNamara, *on behalf of themselves and others similarly situated,* Plaintiffs, -v- Sun & Surf Beach Club Inc., Silver Point Beach Club Inc., Joe Bertucci and Jack Hubbard, *in their individual and professional capacity,* Defendants.	Civ. Case No. 2:15-cv-6691-JFB-SIL

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Plaintiffs (i) Mary Palazzolo, (ii) Megan McNamara, and (iii) Jennifer Rudolph on behalf of themselves and all of their heirs, executors, administrators, attorneys, and assigns (collectively, "Plaintiffs") and Defendants Sun & Surf Beach Club Inc., Silver Point Beach Club Inc., Joe Bertucci and Jack Hubbard, on their own behalf, on behalf of their present and former directors, officers, partners, shareholders, members, employees, representatives, agents, attorneys, owners, and insurers, and on behalf of all of their parents (including but not limited to any grandparent entities, great grandparent entities, and so on), subsidiaries, affiliates, successors, related entities, assigns, heirs, executors, administrators, and attorneys (collectively "Defendants," and with Plaintiffs, the "Parties") hereby agree upon this Settlement Agreement and General Release ("Agreement") as a resolution of all issues involved herein as follows:

1. **Preliminary Matters**. Plaintiffs have reviewed the terms of this Agreement, have had the opportunity to confer with their legal counsel Pardalis & Nohavicka LLP (hereinafter "Plaintiffs' Counsel"), and/or other advisors of their own choosing in order to obtain advice with respect to the terms of this Agreement. Plaintiffs have had the opportunity to consider their counsel's advice with respect to the foregoing and following Agreement. Plaintiffs enter into this Agreement voluntarily and with a full understanding of its terms.

2. **No Admission of Liability**. The Parties recognize and agree that Defendants do not admit, and expressly deny, any violation of law or any liability to Plaintiffs or to anyone else as a result of or growing out of the matters set forth in the Complaint styled Palazzolo et al v. Sun & Surf Beach Club Inc. et al, 2:15-cv-06691-JFB-SIL, filed in the United States District Court for the Eastern District of New York (the "Pending Action"), or which could have been raised in such suit, or which otherwise involve Plaintiffs' employment relationship with Defendants and the separation or termination of Plaintiffs' employment relationship with Defendants.

3. **Dismissal of Pending Action**. For and in consideration of the promises outlined in this Agreement, the sufficiency of which Plaintiffs acknowledge, Plaintiffs agree: (1) to dismiss with prejudice, or cause to be dismissed with prejudice, the Pending Action; (2) not to re-file the causes of action asserted in the Pending Action or any other employment-related causes of action against Defendants; and (3) not to institute any action against any Defendant in any court or other forum based on allegations or claims existing prior to the date of this Agreement that are released as set forth in this Agreement. The Parties expressly authorize their counsel to submit any papers to the Court that are necessary to effectuate the dismissal of the Pending Action and/or a full release of Plaintiffs' claims as specified herein.

4. **Consideration**.

A. Defendants agree to pay Plaintiffs and their attorneys the total sum of Thirty-Three Thousand Dollars and Zero Cents ($33,000.00) pursuant to the terms set forth in Paragraph 8 below (hereinafter the "Settlement Payment"), and other good and valuable consideration as described below.

B. The Parties acknowledge and agree that the Settlement Payment includes but is not limited to attorneys' fees, costs, penalties, interest, back wages, and liquidated damages.

C. Plaintiffs and Pardalis & Nohavicka LLP, the attorneys for Plaintiffs, represent and warrant that: they have not been retained by any other individualsto assert any claims against Defendants that arose prior to the date of this Agreement and that are the same as the claims that have been released pursuant to Paragraph 5, below; they know of no individuals who intend to assert such claims; and they know of no individuals who have instituted such claims in any forum.

5. **Release of Employment-related claims by Parties.**

Plaintiffs

A. In consideration of the promises, payments and actions of Defendants set out in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Plaintiffs, with respect solely and only to conduct that has arisen on, or prior to, the date Plaintiffs execute this Agreement, fully and forever release, relieve, waive, relinquish, and discharge Defendants from all claims, charges actions or causes of action which they had, now have or hereafter may have against Defendants, arising out of Plaintiffs' employment with any of the Defendants, and/or the termination of that employment including: (i) claims under federal, state or local laws, statutes, constitutions, regulations, rules, ordinances or orders, including, but not limited to, claims under the New York Labor Law, the Wage Theft Prevention Act, the New York Hospitality Wage Order, New York Order for Miscellaneous Industries and Occupations, the New York Restaurant Wage Order, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act, the Fair Credit Reporting Act, the Occupational Safety and Health Act, the Family and Medical Leave Act, the New York Corrections Law, the New York State Human Rights Law, the New York City Human Rights Law, each as amended, or any other federal, state, and/or local law; (ii) claims for minimum wages, overtime, commissions, and/or unpaid wages, compensation, and/or other remuneration, whether based on common law or otherwise, which specifically includes all claims for unpaid overtime, improper deductions, travel time, spread of hours pay, bonuses, penalties, expense reimbursements, gratuities, fees, tip credits, tip allowances, service charges, retained gratuities, call-in pay, tools-of-the-trade, and/or meal credits during Plaintiffs' employment with any of the Defendants and/or other compensation, wages, or benefits and/or any related penalties, damages, liquidated damages and attorneys' fees under federal, state and/or local law; and (iii) any other claim, whether for monies owed, reimbursement, attorneys' fees, litigation costs, interest, penalties, damages, liquidated damages, constructive discharge, wrongful discharge, defamation, fraud, misrepresentation, breach of contract, breach of implied contract or otherwise, arising prior to or at the time of the execution of the Agreement, including, but not limited to, all claims asserted in the Pending Action. The Parties hereby specifically acknowledge that this Agreement, and the monies received by Plaintiffs and referenced herein, are a fair and reasonable resolution of a bona fide dispute over a provision of the Fair Labor Standards Act and/or the New York Labor Law and/or for time worked.

B. This release does not affect or limit: (1) claims that may arise after the date Plaintiffs sign this Agreement; (2) Plaintiffs' rights to enforce the terms of this Agreement; and (3) any other claims that, under controlling law, may not be released by private settlement. However, Plaintiffs hereby agree that by signing this Agreement, they relinquish any right to receive any personal monetary relief or personal equitable relief with respect to any matter as to which they have released claims.

Defendants.

Defendants release Plaintiffs from any and all claims, charges, actions, and causes of action of any kind or nature that Defendants once had, could have had, or now have arising out of Plaintiffs' employment with Defendants, whether such claims are now known or unknown to Defendants, from the beginning of the world to the date of the Agreement.

6. **No Further Actions or Claims.** Except for the purpose of seeking enforcement of the terms of this Agreement, the Parties agree that they will not file or institute or cause to be filed or instituted any civil action, action, charge, or other proceeding of any nature or description against the other before any judicial, administrative, arbitral or other forum based upon or arising out of any claims, whether asserted or not, that the Parties may have against the other as of the date of this Agreement.

7. **Taxation**. Plaintiffs and their attorneys understand that Defendants make no representations or guaranties as to the tax consequences of the Settlement Payment. Although Plaintiffs believe, in good faith, that the tax treatment of the Settlement Payment is proper and complies with all applicable federal, state, local and/or municipal tax laws, codes and regulations, if, notwithstanding such belief, the Internal Revenue Service or any other federal, state or local government, administrative agency or court determines that any Plaintiff and/or any Defendant is liable for the payment of any federal, state, local or municipal income or employment taxes, contributions, interest and/or penalties in connection with the Settlement Payment, Plaintiffs shall

fully indemnify Defendants and hold them harmless from any liability for such taxes, contributions, interest and/or penalties, including but not limited to the payment of any attorneys' fees and costs Defendants incur in connection with any such liability.

8. **Payment**.

A. In consideration of the promises of Plaintiffs set forth herein, Defendants shall issue the Settlement Payment set forth in Paragraph 4 as a full and complete settlement and final satisfaction of any and all claims pertaining to Plaintiffs' employment with Defendants that Plaintiffs have or may have against Defendants, through the date Plaintiffs execute this Agreement, as well as any claim for attorneys' fees and costs. The Settlement Payment shall be due and payable via a certified bank check to "Pardalis & Nohavicka LLP *as attorneys for* Mary Palazzolo, Megan McNamara, and Jennifer Rudolph" and delivered to Pardalis & Nohavicka, LLP at 3510 Broadway Suite 201, Astoria, New York 11106.

B. Payment by certified bank checks shall be due no later than ten (10) days after both the following conditions are met: (a) all Plaintiffs have executed this Agreement and delivered the same to Defendants' counsel at Goetz, Fitzpatrick LLP (Attn: Ellen August), One Penn Plaza, Suite 3100,New York, NY 10119; and (b) the Court both approves this settlement as a fair and reasonable resolution of a bona fide dispute over a provision of the Fair Labor Standards Act and/or the New York Labor Law and fully and finally dismisses the Pending Action with prejudice.

C. The Parties agree that the Settlement Payment set forth above will be allocated as follows for tax purposes: 100% subject to 1099 reporting to "Pardalis & Nohavicka LLP *as attorneys for* Mary Palazzolo, Megan McNamara, and Jennifer Rudolph" in consideration for attorneys' fees, costs, penalties, interest, back wages, and liquidated damages. The Settlement Payment shall be made without any tax withholdings and shall be reflected on a Form 1099 issued to Plaintiffs' Counsel, subject to the Court's review and approval of this Agreement.

9. **Governing Law.** The rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of New York, without regard to principles of conflict of laws. Venue and jurisdiction for any dispute between the parties shall lie in the United States District Court for the Eastern District of New York, However, if the District Court should refuse or decline to accept jurisdiction over the Agreement for any reason, the Parties agree that this Agreement may be enforced in a court of competent jurisdiction located in New York County, New York. If any provision is determined by a court of competent jurisdiction to be invalid or unenforceable (other than Paragraph 5, as to which all monies paid hereunder must be returned to Defendants if found to be invalid or unenforceable), the remaining provisions shall continue in full force and effect notwithstanding. Plaintiffs acknowledge that they have not previously transferred, assigned or conveyed any right or claim released in this Agreement. The headings used herein are for reference only and shall not in any way affect the meaning or interpretation of this Agreement.

10. **Reemployment.** Plaintiffs agree to relinquish and hereby do relinquish any and all rights they may have to either directly or indirectly: (i) be employed by, (ii) be assigned to, (iii) work for, (iv) seek employment with or apply to, (v) accept employment with, or (vi) provide services in exchange for compensation in any capacity to (including but not limited to as an employee, independent contractor, consultant or temporary employee) Defendants. Plaintiffs agree that they will not seek, apply for, or accept any employment or assignment to which they have relinquished any rights, and that in the event they inadvertently seek, apply for, or accept any employment or assignment to which they have relinquished any rights they will immediately withdraw, forego, leave and/or voluntarily terminate such inquiry, application, employment and/or assignment. Defendants may also immediately terminate any employment or assignment to which Plaintiffs have relinquished any rights at any time. Plaintiffs agree and understand that this provision is intended to protect the Defendants from allegations of retaliation and that this Section 9 constitutes a material provision of this Agreement.

11. **Confidentiality and Non-Disclosure**. The Parties intend for this Agreement to be confidential, and therefore the Parties agree that they will not comment on or disclose to anyone or request, invite, support or cause another individual to comment or disclose to anyone, the terms of this Agreement, except to the extent required to enforce this Agreement or as required by law. Nothing herein shall be construed to prohibit or impede: (a) Plaintiffs from disclosing the terms of this Agreement to their attorney, accountant or other professional advisor if the person agrees to honor this confidentiality requirement; or (b) Defendants from disclosing the terms of this Agreement to the extent needed to implement them.

12. **Non-disparagement**: Plaintiffs agree that they shall not publicly disparage Defendants or induce or encourage others to disparage Defendants. Defendants agree that they shall not disparage Plaintiffs or induce or encourage others to disparage Plaintiffs.

13. **Status of Settlement If Case Is Not Ultimately Dismissed**. In the event the Court does not dismiss the Pending Action with prejudice as contemplated by this Agreement, this Agreement shall be null and void *ab initio*. In such case, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution date of this Agreement, and the parties shall proceed in all respects as if the Agreement had not been executed.

14. **Important Acknowledgments**. It is further understood and agreed that the Settlement Payment and the other good and valuable consideration provided for herein, are not a mere recital but are the consideration for this Agreement and all terms herein, and the full and final release effected thereby. The Parties represent and warrant that the Settlement Payment is fair and reasonable. The Parties represent and warrant that they are entering into this Agreement of their own free will and accord after consultation with their attorneys. The Parties acknowledge that they have jointly prepared this Agreement and that they are executing this Agreement knowingly and voluntarily.

15. **No Other Representations or Agreements**. Each party acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made by any other party or parties, agents, representatives, or attorneys, to induce the execution of this Agreement, other than the representations expressly stated in the Agreement. This Agreement

constitutes a single integrated contract expressing the entire agreement of the Parties hereto. There is no other agreement or understanding, written or oral, expressed or implied, among the parties hereto concerning the subject matter hereof, except the agreements set forth in this Agreement. This Agreement constitutes and contains the entire agreement among the parties, and supersedes and replaces all prior negotiations and all agreements, proposed or otherwise, written or oral, concerning the subject matter hereof. This is a complete and integrated document.

16. **Binding on Assigns**. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, successors, legal administrators and assigns.

17. **No Modification Except In Writing**. This Agreement cannot be modified or changed except by a writing, signed by the Parties, with specific reference to this Agreement.

18. **Execution In Counterpart and Facsimile Signatures**. This Agreement may be executed in counterpart by each party and each executed Agreement, when taken together, shall constitute a complete Agreement. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

19. **Knowing and Voluntary Release of Claims.** Plaintiffs acknowledge that:

A. Plaintiffs have carefully read this Settlement Agreement and they fully understand its meaning;

B. Plaintiff Mary Palazzolo ("Palazzolo"), who is over 40 years of age, has been advised that an individual waiving rights under the Age Discrimination in Employment Act ("ADEA") is entitled to a minimum of 21 days within which to consider this agreement and release, and therefore Plaintiff Palazzolo acknowledges that she has 21 days from the date of receiving this Settlement Agreement, which contains a release of ADEA claims, to return the signed Settlement Agreement and release. Plaintiff Palazzolo acknowledges that she may execute and return this agreement and release earlier if she so decides, and that by executing and returning this agreement and release during the 21 day period, she will waive any right to consider the agreement and release for the 21 day period. Plaintiff Palazzolo acknowledges that she has been further advised that she may consult with an attorney or other adviser of her choosing prior to making the decision to execute and return this Settlement Agreement.

C. Defendants hereby advise Plaintiffs in writing that Plaintiffs should consult with an attorney before signing the Settlement Agreement, and Plaintiffs acknowledge that they have in fact consulted with an attorney regarding this Agreement, or that they have waived this right.

D. Plaintiffs are signing this Agreement, knowingly, voluntarily, and without any coercion or duress; and

E. Everything Plaintiffs are receiving for signing this Agreement is described in the Agreement itself, and no other promises or representations have been made to cause Plaintiffs to sign it.

20. **Revocation**. Plaintiff Palazzolo understands and agrees that she has a period of seven (7) days following the signing of this Agreement to revoke it. Plaintiff Palazzolo understands that in the event that she revokes this Agreement, the entire Agreement shall be null and void and of no force or effect on either party and therefore Defendants will be under no obligation to make the payments set forth in Paragraphs 4 and 8. In order to revoke this Agreement, Plaintiff Palazzolo must sign and send a written notice of the decision to do so, addressed to Goetz, Fitzpatrick LLP, (Attn: Ellen August), One Penn Plaza, Suite 3100, New York, NY 10119 and the written notice must be received by Defendants no later than the eighth day after Palazzolo signed this Agreement. Plaintiff Palazzolo further understands that this Settlement Agreement shall not be effective or enforceable until the day after the seven (7) day revocation period has expired and provided that Plaintiff Palazzolo exercises her right to revoke this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused their duly authorized officer, to execute this Agreement.

PLAINTIFFS:

______________________ Date: July __, 2016
MARY PALAZZOLO

______________________ Date: July __, 2016
MEGAN MCNAMARA

______________________ Date: July __, 2016
JENNIFER RUDOLPH

DEFENDANTS:

______________________ Date: July 11, 2016
SUN & SURF BEACH CLUB INC.

______________________ V.P. Date: July 11, 2016
SILVER POINT BEACH CLUB INC.

______________________ Date: July __, 2016
JOE BERTUCCI

______________________ Date: July 11, 2016
JACK HUBBARD

ATTORNEYS FOR PLAINTIFFS:

______________________ Date: ~~July~~ Aug. 22, 2016
PARDALIS & NOHAVICKA, LLP

ATTORNEYS FOR DEFENDANTS:

______________________ Date: ~~July~~ August 9, 2016
GOETZ FITZPATRICK, LLP

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IN WITNESS WHEREOF, the Parties hereto have executed, or caused their duly authorized officer, to execute this Agreement.

PLAINTIFFS:

Mary Palazzolo ____________________ Date: July 12, 2016
MARY PALAZZOLO

____________________ Date: July __, 2016
MEGAN MCNAMARA

Jennifer Rudolph ____________________ Date: July 15, 2016
JENNIFER RUDOLPH

DEFENDANTS:

____________________ Date: July __, 2016
SUN & SURF BEACH CLUB INC.

____________________ Date: July __, 2016
SILVER POINT BEACH CLUB INC.

____________________ Date: July __, 2016
JOE BERTUCCI

____________________ Date: July __, 2016
JACK HUBBARD

ATTORNEYS FOR PLAINTIFFS:

____________________ Date: July __, 2016
PARDALIS & NOHAVICKA, LLP

ATTORNEYS FOR DEFENDANTS:

____________________ Date: July __, 2016
GOETZ FITZPATRICK, LLP

IN WITNESS WHEREOF, the Parties hereto have executed, or caused their duly authorized officer, to execute this Agreement.

PLAINTIFFS:

Mary Palazzolo ______________________ Date: July 12, 2016
MARY PALAZZOLO

Megan McNamara ______________________ Date: ~~July~~ aug 16 __, 2016
MEGAN MCNAMARA

______________________ Date: July __, 2016
JENNIFER RUDOLPH

DEFENDANTS:

______________________ Date: July __, 2016
SUN & SURF BEACH CLUB INC.

______________________ Date: July __, 2016
SILVER POINT BEACH CLUB INC.

______________________ Date: July __, 2016
JOE BERTUCCI

______________________ Date: July __, 2016
JACK HUBBARD

ATTORNEYS FOR PLAINTIFFS:

______________________ Date: July __, 2016
PARDALIS & NOHAVICKA, LLP

ATTORNEYS FOR DEFENDANTS:

______________________ Date: July __, 2016
GOETZ FITZPATRICK, LLP